

ground that it came to his knowledge some way from his being employed as a surgeon for one or both of the parties; and I take for granted, if Mr. Hawkins understands that it is your lordships' opinion, that he has no privilege on that account to excuse himself from giving the answer, that then, under the authority of your lordships' judgment, he will submit to answer it. Therefore, to save your lordships the trouble of an adjournment, if no lord differs in opinion, but thinks that a surgeon has no privilege to avoid giving evidence in a court of justice, but is bound by the law of the land to do it, (if any of your lordships think he has such a privilege, it will be a matter to be debated elsewhere, but) if all your lordships acquiesce, Mr. Hawkins will understand that it is your judgment and opinion, that a surgeon has *no privilege*, when it is a material question, in a civil or criminal cause, to know whether parties were married, or whether a child was born, to say that his introduction to the parties was in the course of his profession, and in that way he came to the knowledge of it. I take for granted, that if Mr. Hawkins understands that, it is a satisfaction to him and a clear justification to all the world. If a surgeon was *voluntarily* to reveal these secrets, to be sure he would be guilty of a breach of honour, and of great indiscretion; but to give that information in a court of justice, which by the law of the land he is bound to do, will never be imputed to him as any indiscretion whatever.

The question was then put once more, and answered directly by Mr. Hawkins.

And *Mr. Justice Buller*, in giving judgment in the case of *Wilson v. Rastall*, above alluded to, thus proceeds:—

"I take the distinction to be now well settled, that the privilege extends to those three enumerated cases, (counsel, solicitor, and attorney,) at all times; but that it is confined to these cases only. There are cases to which it is much to be lamented, that the law of privilege is not extended; those in which medical persons are obliged to disclose the information which they acquire by attending in their professional characters. This point was very much considered in the *Duchess of Kingston's* case, where Mr. Cæsar Hawkins, who had attended the Duchess as a medical person, made the objection himself, but was overruled, and compelled to give evidence against the prisoner."*

56. *Can a woman, during the whole course of Utero-gestation, be ignorant that she is Pregnant?*—Most women accused of infanticide, allege in their defence that they were ignorant of their being pregnant, and some writers on medical jurisprudence admitted its possibility in cases in which the woman has conceived during sleep, in a state of complete drunkenness, or finally in a disease which deprived them of their senses. The motions of the fœtus, however, and other signs of pregnancy must, in most cases, make the woman aware of her condition. M. Orfila nevertheless quotes many cases of married women who had previously had children, and who had no motive for concealing their pregnancy, who went on the full term of gestation without ever suspecting their condition. Dr. Lozes has related in the *Archives Générales* for February last, the two following cases, which are confirmatory of the opinion of the learned medical jurist just alluded to. Under the head *Midwifery*, Art. 53, p. 521, will be found the opinion of Dr. Elliotson on this subject, and which coincides with that of MM. Orfila and Lozes.

CASE I.—I was consulted, says M. Lozes, in the month of August, 1819, by a female to whom I had before rendered professional services, and who placed the most implicit confidence in me. This woman, taller than common, and of a very thin habit, had the abdomen very much swelled, to such a degree that she thought herself attacked with abdominal dropsy. After having examined her with care, I told her that I believed her to be with child: to which she frankly replied, that she did not think so, and for the following reasons:—She told me that she was forty-six years of age, that she had ceased to menstruate in her forty-second year, that she had entered the house of a bachelor as a house-

* See State Trials, trial of the Duchess of Kingston for bigamy, A. D 1776, vol. xx. col. 572-576.

keeper, that they had always lived in connubial state, always adopting *precautions*, (these were her words,) but that for the four years past, when she ceased to menstruate, they thought it unnecessary to adopt these precautions: she also added that she did not experience any of the inconveniences observed by pregnant women, and that she never felt any movements in her abdomen. It is evident from what I have just related, that this woman spoke with frankness, and yet I thought proper to delay for a while prescribing the treatment suitable for the disease under which she believed herself to labour. About six weeks afterwards, I was called to this same woman, and brought her to bed of a well-formed child.

CASE II.—In the month of October, 1824, being at Rheims, a physician of that city, (Dr. Noel,) requested me to go with him to visit a lady who for twenty-four hours past had suffered from violent pains through the whole extent of the abdomen, and which had gone on increasing in spite of diet, semicupia and emollient fomentations. Dr. N. told me that he believed the uterus to be affected; for, said he, during these six hours past, a sanguinolent sanies has been flowing from the vulva. On our arrival at the patient's we found her seated, and only suffering from pain at intervals; she informed me that she was fifty-two years of age, that she had been married thirty years, and had her menses regularly until forty-five years old, and always enjoyed good health, but had never borne children.

As there flowed from the vulva matters tinged with blood, M. Noel solicited the lady to allow me to make an examination, to which she consented, and I own that I was astonished at finding the head of a child ready to pass the superior strait.

When I announced that the patient was about to be brought to bed, both she and her husband were not a little astonished; she, who had always been corpulent, assured me that the volume of her abdomen had not been enlarged, and that she had never felt any movements of the child. At all events, I determined, two hours after, to apply the forceps, and this lady was delivered of a living and well-formed child, which she suckled herself.

I ought to add in conclusion, that Dr. Noel had only seen this lady once, from the time in which she had been taken with the supposed colics. It was this which I believe led him into the error.

57. *Singular Trial for Infanticide.*—"Mr. Beasse, a person of tolerable station on the Island of Guernsey, carried on an illicit intercourse with his servant, Sarah Elliot, the consequence of which was, that she became pregnant. Early in the month of May he mentioned the latter circumstance to a friend, and confided to him his intention of having the girl sent to the adjoining coast of France, or to England, when the period of her delivery approached, in order to escape the scandal. On the night of the 10th of June following, however, her delivery took place in his house—prematurely, according to the statements of the girl herself, and of Mr. Beasse in his declaration—and in all probability at least unexpectedly, for he had a party of friends with him that evening till midnight, and when they left his house he accompanied them, and did not return home till half past one, although he knew she was unwell. Medical advice was not procured. The girl was delivered about four or five in the morning of the 11th, of a still-born child, as she represented; and in order to keep the affair quiet, and allow her to recruit her strength, she was locked up in her room, and a false story told of her having gone to visit a brother in the neighbourhood. It is particularly worthy of remark, that among the steps taken to spread this story, the girl herself, within two hours after her delivery, went to the window of her room, and told her pretended intention to a boy in the garden, who stood about forty paces off. About the same time Mr. Beasse went to a friend, the same he had consulted formerly, to ask his advice what he should do; and at this person's recommendation he allowed a surgeon to visit the girl at mid-day, who found her in bed with the after-birth not expelled,